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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

ROBERT THOMSON,

Plaintiff,

vs.

TORRANCE POLICE DEPARTMENT and  
THE LOS ANGELES COUNTY SHERIFFS  
DEPARTMENT,

Defendants.

**CASE NO. 2:11-cv-06154-SJO-JC**

**REPLY BRIEF RE PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

DATE: February 27, 2012

TIME: 10:00 a.m.

HON.: Judge S. James Otero

Public safety concerns may justify permissible regulations of protected activities, but the Constitution does not permit fundamental civil rights to be abridged by public safety fears. See, e.g., Near v. Minnesota, 283 U.S. 697, 721-22 (1931). Despite this maxim, defendants do just that, arguing that public safety alone is their sole basis for infringing upon a Fundamental Right.

1        This case is not about the public safety concerns related to gang members  
2 with guns, it is about law abiding citizens challenging the regulation of a protected  
3 activity with arbitrary and discretionary criteria not supported by any credible  
4 evidence. Contrary to Defendants beliefs, they are no less free to restrict speech  
5 they fear is dangerous than they are the Rights of Citizens to keep and bear arms  
6 for self-defense.

7        Defendants have a policy of restricting access to concealed weapon permits  
8 because of their belief that more guns equal more crime, and in support offer the  
9 declaration of Mr. Zimring who states the obvious: guns are dangerous.  
10 Defendants however ignore a significant distinction regarding their fear of  
11 concealed weapons. Carrying a concealed weapon in Los Angeles County is a  
12 crime and the District Attorney charges it as a Felony. Law enforcement has a  
13 significant right and responsibility to enforce the law and eliminate the illegal  
14 carrying of concealed weapons. To that extent, Plaintiff agrees with the  
15 opposition, but that has nothing to do with this case, which is about permits, not  
16 gang members.

17        This case is about the only method for LEGALLY carrying a weapon in  
18 order to exercise the protected right to carry a weapon for self-defense as  
19 recognized by the Second Amendment and the California legislature.  
20 Constitutional jurisprudence and Fundamental Rights analysis requires something  
21 more than a stated fear of guns, otherwise, the government could regulate other  
22 protected rights, like speech, based upon a stated fear; a nexus or relationship  
23 between the restriction of the protected right and public policy goal is required and  
24 the government bears that burden of proof and here the only “proof” they have  
25 provided is a fear that guns are dangerous, with no effort to explain how their  
26 policy has the effect of reducing violence. Inherent in any nexus is a cause and  
27 effect relationship.  
28

1 In a First Amendment context, using intermediate scrutiny and interpreting  
 2 the rationale set forth in *City of Los Angeles v. Alameda Books, Inc.*, (2002) 535  
 3 U.S. 425, the Seventh Circuit held:

4 [...] [B]ecause books (even of the "adult" variety) have a constitutional status  
 5 different from granola and wine, and laws requiring the closure of  
 6 bookstores at night and on Sunday are likely to curtail sales, the public  
 7 benefits of the restrictions must be established by evidence, and not just  
 8 asserted. The evidence need not be local; Indianapolis is entitled to rely on  
 9 findings from Milwaukee or Memphis (provided that a suitable effort is  
 10 made to control for other variables). See *Andy's Restaurant*, 466 F.3d at 554-  
 11 55. ***But there must be evidence; lawyers' talk is insufficient.*** (Emphasis  
 12 added.)  
 13 *Annex Books v. City of Indianapolis*, 581 F.3d 460, 463 (7th Cir. 2009)

14 Defendants focus on the illegal carrying of a concealed weapons and Mr.  
 15 Zimring never even mentions concealed weapon permit holders or how the  
 16 restrictive policy furthers any governmental interest, except to say that gang  
 17 members might get a permit. Defendants have not offered a shred of evidence to  
 18 support their belief that their policy has the result they purport to seek:

19 Q. Can you provide any support for how your policy of drastically  
 20 restricting the issuance of CCW permits prevents violence?

21 A. I -- I think just the -- putting more guns on the street, I think could  
 22 clearly create much more violence in the County of Los Angeles, and I think  
 23 we need to restrict the number of weapons that are available on the streets  
 24 legally.

25 Q. Last year, how many weapons were stolen from permit holders outside  
 26 of their home?

27 A. I don't know. Deposition of Larry Waldie Page 25 Line 13-25

28 Q. How does your restrictive policy regarding CCW's protect against gun  
 violence in the community at large?

A. Basically, restricting the number of weapons that possibly could get on  
 the street and lead to violent and inappropriate manner.  
 Deposition of Undersheriff Waldie at page 32, line 22 to page 33 line 4.

The reality is that Mr. Zimring is correct, gang members with guns are bad,  
 but the issue in this case is law abiding citizens who, after proper training and  
 background checks, seek to exercise their Fundamental Rights in the only way  
 permitted by California law, with a permit.

1 The undisputed expert testimony from Mr. Mudgett is that the government's  
 2 interest in reducing crime and decreasing violence is furthered by granting CCW  
 3 permits, not restricting them, a fact the government has never even attempted to  
 4 rebut. Neither Mr. Zimring, nor Mr. Tanaka, at any time relate their policy of  
 5 restricting the protected rights of law abiding citizens to reducing gang violence,  
 6 and in fact, Mr. Tanaka's predecessor admitted he would never issue a CCW to a  
 7 gang member, thus vitiating the entire declaration of Mr. Zimring and leaving  
 8 defendants with the untenable argument that public safety justifies their  
 9 infringement of Plaintiff's Fundamental Rights:

10 Q Do gang members ever apply for CCW permits from you?

A They may. I do not know.

11 Q Have you ever issued a permit to a gang member?

A Not to my awareness.

12 Q Would you?

A Well, if he fell within the confines of the law and there was no criminal  
 13 record.

14 When you say "gang member," obviously he has criminal background and  
 15 DOJ wouldn't allow us to issue to that person. That would probably not, you  
 know, stop them, but they could certainly apply. And -- but he wouldn't  
 meet the criteria probably, and it would never reach my desk.

16 A ... I'd be kind of prone not to want to do that if they were listed in Cal  
 17 Gangs as a gang member. Page 34 line 8 to page 35 line 1.

18 In contrast to absence of any relationship or nexus between the stated  
 19 governmental interest and the Right being restricted, Plaintiff's expert testifies:

20 It is my opinion, based upon my education, training, and experience and  
 21 being intimately familiar with firearms research, regulation, publications and  
 22 studies, that there is no correlation between the issuance of CCW permits  
 23 and unlawful violence. In fact as a retired law enforcement officer, it has  
 24 been my experience that criminals do not seek out training or licensing for  
 25 the purpose of carrying concealed weapons, and CCW permit holders are not  
 26 in any way likely to increase crime or violence, and among the gun owning  
 27 population are safer and more likely to reduce the accident rate because of  
 28 their increased training and awareness. What facts I am aware of indicate  
 that armed and trained citizens reduce crime by their very existence, as  
 criminals do not know which citizens are in fact armed. Mudgett  
 Declaration at Paragraph 8.

1 To “bear arms,” as used in the Second Amendment, is to “wear, bear, or  
2 carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of  
3 being armed and ready for offensive or defensive action in a case of conflict with  
4 another person.” District of Columbia v. Heller (2008) 128 S. Ct. 2783, 2793 .  
5 “[T]he core right identified in Heller [is] the right of a law-abiding, responsible  
6 citizen to possess and carry a weapon for self-defense.” United States v. Chester  
7 (2010) 628 F.3d 673.

8  
9 February 6, 2012

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Jonathan W. Birdt, Esq.  
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